

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

TROY PATTERSON,

Petitioner,

: Case No. 3:16-cv-098

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

TERRY A TIBBALS, Warden,
London Correctional Institution,

:

Respondent.

ORDER VACATING THE STAY

This is an action pursuant to 28 U.S.C. §2254 for a writ of habeas corpus. Mr. Patterson filed his Petition on March 22, 2016 (ECF No. 1). On this Court's Order for Answer (ECF No. 2), Respondent filed the State Court Record (ECF No. 5) and a Return of Writ (ECF No. 6). In his Traverse (ECF No. 8), Petitioner requested that the case be stayed to permit exhaustion of his then-pending motion to withdraw guilty plea in the Common Pleas Court of Montgomery County. The Magistrate Judge then stayed the case pending Judge Huffman's decision and any appeal (Order, ECF No. 8).

Petitioner now seeks vacation of the stay, reporting to this Court that the Supreme Court of Ohio on June 6, 2018, declined jurisdiction over an appeal from the denial of the motion (Motion to Lift Stay, ECF No. 30). That Motion is GRANTED. The Order that this case be administratively processed (ECF No. 9) is VACATED and the case is returned to the active docket. Likewise, Patterson's Motion for a copy of the docket (ECF No. 37) is GRANTED and the Clerk shall mail a printed copy of the docket to Petitioner.

In two additional filings, Petitioner purports to amend his Petition and claims to be able to do so as a matter of right because, he says, the Respondent has not answered (ECF Nos. 31 & 32). This is not correct: Respondent did answer on June 27, 2016. Therefore any amendment must be with the consent of Respondent or with court permission (See 28 U.S.C. § 2242; Fed. R. Civ. P. 15). The purported amendments (ECF Nos. 31 & 32) are therefore STRICKEN without prejudice to their inclusion in a motion to amend. In accordance with this Court's standard practice, any renewed motion to amend shall have an attached complete proposed amended petition (i.e., all the original claims and any new claims). Petitioner shall file any such motion to amend not later than July 20, 2018.

The case is also before the Court on Petitioner's Motion to Expand the Record (ECF No. 34) which seeks to add Judge Huffman's Decision denying the motion to withdraw plea (ECF No. 34). It is appropriate instead to have Respondent file a supplemental state court record which contains all documents filed in the Ohio courts (Common Pleas, Second District, and Supreme Court) since Exhibit 45, which is Patterson's Motion to Withdraw Plea. Said supplement shall be filed not later than July 24, 2018. The Motion to Expand the Record is GRANTED.

Petitioner has also filed, without seeking or obtaining Court permission, the Affidavits of Shawn McLean (ECF No. 33), James Perry Easterling (ECF No. 35), and Charlene Easterling (ECF No. 36). Expansion of the record may occur only with Court permission and these three Affidavits are accordingly STRICKEN. Petitioner may move to expand the record to add these Affidavits upon proper motion, but Petitioner is cautioned that the Court is severely limited in its ability to consider evidence that was not before the state courts. If, however, any of these Affidavits were before Judge Huffman on the Motion to Withdraw Plea, they should be included in the supplemental record to be filed by Respondent.

July 10, 2018.

s/ *Michael R. Merz*
United States Magistrate Judge